



Code section 14900 *et seq.*, by distributing 100 copies of the CCR free of charge to state depository libraries. Libraries which do not receive one of the 100 free subscriptions must pay a one-time cost of \$1,850, plus an annual update charge of \$1,985. This compares to the former cost of \$1,640 for annual updates for the state-printed CCR.

Barclays contends that private publication and distribution of the CCR will benefit the regulated public by providing more accurate and timely information in a variety of easy-to-use formats. However, according to Nancy Carol Carter, Director of the Legal Research Center at the University of San Diego School of Law, in a July 24 article in the *San Diego Daily Transcript*, the general response from state depository librarians is one of concern that privatization of the CCR has not furthered the public policy ideal of broad access to legal information, but has directly constricted it.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at page 46:

SB 310 (Dills) was substantially amended on July 11 and is no longer relevant to OAL.

AB 1395 (Speier), as amended September 9, provides that all rules and regulations of the State Board of Control shall be adopted in accordance with the APA. This bill was signed by the Governor on October 14 (Chapter 1185, Statutes of 1991).

AB 400 (Margolin), as introduced February 4, would similarly subject the Division of Industrial Accidents and the Workers' Compensation Appeals Board to the provisions of the APA; this two-year bill is pending in the Senate Governmental Organization Committee.

SB 327 (Hill), as amended July 18, requires every agency decision on petitions for rulemaking under Government Code section 11347.1 to be in writing, and to be transmitted to OAL for publication in the *Notice Register* at the earliest practicable date. This bill also requires the agency's rulemaking file to contain a copy of any decision granting, in whole or in part, a petition for the adoption, amendment, or repeal of an administrative regulation. Finally, SB 327 specifies that any action by the Department of Finance to adopt and update, as necessary, instructions to any state or local agency for the preparation, development, and administration of the state budget, including any instructions included in the State Administrative Manual, is exempt from APA provisions relating to OAL. This bill was signed by

the Governor on October 14 (Chapter 899, Statutes of 1991).

AB 88 (Kelley), as amended May 21, would exempt from the APA the Water Resources Control Board's (WRCB) adoption or revision of state policy for water quality control and water quality control plans and guidelines; the issuance of waste discharge requirements, permits, and waivers; and the issuance or waiver of water quality certifications. The bill would require WRCB and its regional boards to provide notice to specified persons and organizations, to prepare written responses to comments from the public, and to maintain an administrative record in connection with the adoption or revision of state policy for water quality control and water quality control plans and guidelines. This two-year bill is pending in the Senate Agriculture and Water Resources Committee.

AB 1100 (Lee). The Used Oil Collection Demonstration Grant Program Act of 1990 requires the California Integrated Waste Management and Recycling Board (CIWMB) to develop and administer a used oil grant program, and to adopt regulations therefor by July 1, 1991. As amended August 22, this urgency bill instead requires CIWMB to adopt emergency regulations in accordance with specified provisions, and deletes the July 1, 1991 deadline. This bill was signed by the Governor on October 5 (Chapter 586, Statutes of 1991).

AB 1736 (Campbell), as amended May 1, would specify that no exemption to any provision of the State Contract Act, whether by statute, regulation, or in the State Administrative Manual, shall apply to any action taken by OAL to have the CCR or updates to the CCR compiled, printed, or published by anyone other than a state agency. This bill is pending in the Assembly Ways and Means Committee.

AB 2060 (Polanco), as amended May 15, would require state agencies and air pollution control districts to adopt rules and regulations creating a variance process, whereby an individual or private entity may apply for relief from regulations adopted by that governmental agency, and would require every such agency to adopt a procedure for an appeal of any decision that leads to orders, sanctions, or fines being given to private individuals or entities, including the denial of a variance. This bill is pending in the Assembly Ways and Means Committee.

AB 2061 (Polanco), as amended September 5, requires state agencies proposing to adopt or amend any regulation to assess the potential for adverse economic

impact on California small business enterprises and individuals. This bill also authorizes a court to declare a regulation invalid if a declaration by the adopting state agency that the regulation will not have a significant adverse economic impact on small business is in conflict with substantial evidence in the record. This bill was signed by the Governor on October 9 (Chapter 794, Statutes of 1991).

LITIGATION:

OAL's appeal of the trial court's March 5 judgment in *Fair Political Practices Commission (FPPC) v. Office of Administrative Law, et al.*, No. 512795 (Sacramento County Superior Court), is still pending. The lower court held that FPPC regulatory actions are subject to review under the APA only as it existed at the time of the electorate's 1974 approval of the Political Reform Act which, *inter alia*, created the FPPC. OAL, its authority to review agency regulations, and the six criteria upon which its review is based were not created until 1980. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 44; Vol. 11, No. 1 (Winter 1991) p. 38; and Vol. 10, No. 4 (Fall 1990) p. 39 for background information.)

Following the filing of the appeal, the FPPC submitted sections 18951, 18736, and 18736.1, Title 2 of the CCR, to OAL for review under the 1974 APA. Section 18951 describes, for purposes of Government Code sections 89516(e) and 89517(c), when the use of any real property, appliance, equipment, or vehicle is incidental to its use for political, legislative, or governmental purposes. The other two sections require every state agency and local government agency to submit biennial reports on the status of its conflict of interest codes, and describe the required contents of these reports. On July 19, OAL disapproved the proposed regulations, because FPPC failed to submit a corresponding rulemaking file as required under the current APA. Although the 1974 version of the APA does not require the submission of a rulemaking file, OAL contends that its filing of the appeal has automatically stayed enforcement of the judgment compelling OAL to follow the 1974 version of the APA when reviewing regulations submitted by FPPC.

OFFICE OF THE AUDITOR GENERAL

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The Office of the Auditor General (OAG) is the nonpartisan auditing and investigating arm of the California legis-



lature. OAG is under the direction of the Joint Legislative Audit Committee (JLAC), which is comprised of fourteen members, seven each from the Assembly and Senate. JLAC has the authority to "determine the policies of the Auditor General, ascertain facts, review reports and take action thereon . . . and make recommendations to the Legislature . . . concerning the state audit . . . revenues and expenditures. . . ." (Government Code section 10501.) OAG may "only conduct audits and investigations approved by" JLAC.

Government Code section 10527 authorizes OAG "to examine any and all books, accounts, reports, vouchers, correspondence files, and other records, bank accounts, and money or other property of any agency of the state . . . and any public entity, including any city, county, and special district which receives state funds . . . and the records and property of any public or private entity or person subject to review or regulation by the agency or public entity being audited or investigated to the same extent that employees of that agency or public entity have access."

OAG has three divisions: the Financial Audit Division, which performs the traditional CPA fiscal audit; the Investigative Audit Division, which investigates allegations of fraud, waste and abuse in state government received under the Reporting of Improper Governmental Activities Act (Government Code sections 10540 *et seq.*); and the Performance Audit Division, which reviews programs funded by the state to determine if they are efficient and cost effective.

MAJOR PROJECTS:

Ongoing Audit. At the request of Senator Robert Presley, OAG is currently examining the Public Utilities Commission's (PUC) intervenor compensation program. Several consumer groups who commonly participate in PUC proceedings on behalf of the general public interest, including Public Advocates, TURN, Utility Consumers' Action Network, and the Center for Public Interest Law, agree that the PUC's present system is overly lengthy and inadequate. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 1 for background information.) According to OAG, the audit will examine the number of compensation requests handled by the PUC, the rules for determining compensation amounts, and the time lag between request and payment. OAG expected to release its report in late fall.

Conflict of Interest Code Revisions Sought. On June 7, the OAG announced its intent to amend its conflict of interest

code pursuant to Government Code sections 87302 and 97306. The code will designate OAG employees who must disclose certain investments, income, interests in real property, and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests. The written comment period on the proposed amendments ended on July 22. OAG adopted the proposed changes on July 22; they await approval by the Fair Political Practices Commission.

RECENT AUDITS:

Report No. C-057 (June 1991) concerns escalating health care costs in California. OAG contracted with Price Waterhouse to study the major causes of health care cost increases and define the extent to which each component contributes to overall medical cost inflation. The purposes of this study were to identify various components of health care expenditures and the underlying factors thought to generate changes in the cost of health care, and collect and organize data about both the components of the cost of health care and the underlying factors impacting health care costs.

Price Waterhouse found that health care costs consumed 11.1% of the nation's gross national product in 1988, compared to 8.6% in 1979. California's health care costs appear to be rising at a rate comparable to the rest of the country. General inflation and medical inflation accounted for 77% of the overall rise in health care costs between 1980 and 1988. Aggregate population growth, cited as a major source responsible for cost escalation along with "other factors," accounted for 23% of the cost increase; the "other factors" include demographic changes, changes in health care technology, malpractice liability, and economic incentives within the health care industry, particularly in the payment system.

The report also notes problems in California's health care expenditure data collection system, and offers suggestions for its improvement. According to OAG, there is a lack of data on the overall health care system and its finances, although California does have a comprehensive data collection system for selected portions of the health care system, including hospitals, long-term care facilities, and Medi-Cal utilization. A lack of data was particularly apparent in the areas of health insurance coverage, non-hospital physician services, drug expenditures, and ambulatory care in non-hospital settings. OAG suggests that additional reporting requirements or the use

of sampling techniques may provide the means to obtain this additional data.

Report No. P-950 (July 1991) concerns the financing of single-family homes and multifamily rental projects by the California Housing Finance Agency (CHFA). CHFA was created to meet the housing needs of persons and families of low or moderate income by providing low-interest loans to qualified borrowers. Among other requirements, a borrower's income must not exceed certain limits, the price of the home must not exceed certain limits, the borrower must not have owned his/her principal residence during the preceding three years, and the home must be the borrower's principal residence. For a developer to obtain a loan for a multifamily rental project, the developer must set aside a certain amount of the project's units for households whose income is within various established limits.

OAG found that, from July 1, 1985 to June 30, 1990, CHFA financed approximately 21,600 loans for single-family homes at an average sales price of approximately \$84,300. OAG reports that "virtually all" of the loans were made to households with the appropriate income levels: Approximately 91% of these loans were to households of moderate income (from 120-150% of the area median income) and less than 9% were to households of very low and lower income (less than 50% and less than 80% of the area median income, respectively). During this same time period, CHFA made loans for 47 multifamily rental projects comprising 3,390 housing units. Approximately 1,230 (36%) of these units were restricted to lower or very low income households, exceeding the percentage required by state law. However, seven projects have not submitted reports on the income of the occupants of these units, and nineteen projects submitted reports that did not list a sufficient number of qualified tenants as required by the projects' regulatory agreements with CHFA.

Finally, OAG reported that CHFA, as required by law, financed the development of new housing in certain types of demographic areas in the same general proportion as the breakdown of the needs for new housing and rental units for very low or lower income households in these areas as identified in the California Statewide Housing Plan (statewide plan). However, CHFA was not as proportionally balanced in awarding loans for the rehabilitation of existing housing units or for the development of rental units for the elderly.

OAG noted that CHFA does not maintain its database in sufficient detail to allow it or anyone else to determine the



extent to which it finances activities consistent with some of the more specific needs identified in the statewide plan, and recommended that CHFA revise its database accordingly.

Report No. P-131 (August 1991) concerns California's implementation of Chapter 61, Statutes of 1988, which requires state agencies that award certain contracts to achieve statewide participation goals of 15% for minority-owned businesses and 5% for women-owned businesses. Successful bidders for state contracts may meet the statewide participation goals either by including minority- or women-owned businesses as subcontractors or suppliers, or by demonstrating that they have made a good-faith effort to meet the goals by attempting to include them.

OAG reviewed five state agencies' compliance with the law and found numerous problems. For example, three of the five agencies reviewed by OAG, including the California State University, were not always in compliance with the law and a fourth, the Department of Transportation, did not begin implementing the law until October 1990. The other agencies reviewed were the Department of Corrections, the Department of General Services, and the Department of Water Resources. OAG reported various problems with the five agencies, including the following:

- Some agencies have not adopted regulations to implement the law.

- Some agencies, including the California State University and Department of General Services, have not always required successful bidders to document the efforts they have undertaken to include minority- and women-owned businesses in contracts.

- Some agencies, including the Department of Transportation, did not report their participation levels to the Governor and the legislature, as required by law.

- Some agencies did not use consistent methods to prepare the reports they submitted to the Governor and the legislature.

- The data which the Office of Small and Minority Business (OSMB) and other state agencies included in their reports to the legislature do not accurately reflect the actual participation levels of minority- and women-owned businesses; this is due partly to OSMB's failure to include the amounts that some agencies reported for construction contracts in which minority- and women-owned businesses participated as subcontractors. Although the data for participation levels of minority- and women-owned businesses for four of

the five agencies reviewed were inaccurate, OAG concluded that it is still unlikely that these agencies would have met the goals had the data been reported correctly.

As to ensuring that the law is complied with, OAG recommends that policies and procedures be fully implemented to ensure that successful bidders are either meeting the statewide participation goals or are making good faith efforts to meet the goals by attempting to include minority- and women-owned businesses in their contracts. As to the accuracy of reported data, OAG recommends, among other things, that OSMB be assigned the responsibility of providing instructions to state agencies for reporting data on the participation levels of minority- and women-owned businesses in state contracts.

Report No. P-113 (June 1991) concerns the Department of Health Services' (DHS) estimates of savings resulting from the Medi-Cal Drug Discount Program, which was established in 1990 primarily to obtain significant price discounts on pharmaceuticals. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 49; Vol. 11, No. 2 (Spring 1991) p. 45; and Vol. 11, No. 1 (Winter 1991) pp. 42-43 for summaries of other reports on DHS' implementation of the Medi-Cal program.) OAG reports that DHS' estimate of \$50 million in savings during 1990-91—which was developed prior to the time the drug discount program was established—has been revised to \$3.3 million. The revised estimate is based on the program which was eventually adopted and on DHS' contracts with drug manufacturers. In March 1991, DHS estimated its savings from the drug discount program for fiscal year 1991-92 to be \$7.3 million. However, the Legislative Analyst's Office (LAO) disagreed, estimating that the program will result in net costs to the state of approximately \$2.5 million in both fiscal years 1990-91 and 1991-92.

OAG evaluated the methodology used by DHS and found numerous errors in the Department's estimating process. In response to OAG's findings, DHS noted that the majority of problems identified during the audit "stem from deficiencies in [DHS] recordkeeping." According to DHS Director Molly Coye, these deficiencies have since been corrected.

Report No. P-117 (July 1991) is the second in a series of semiannual reports concerning DHS' system for compiling statistical information on drug treatment authorization requests under the Medi-Cal program. (See CRLR Vol. 11, No. 2

(Spring 1991) p. 45 for background information.) OAG analyzed DHS' process for counting and compiling drug treatment authorization requests, and found that the Medi-Cal drug units made several errors compiling monthly statistical reports and incorrectly counted, processed, and transferred data regarding daily and monthly reports. However, the impact of these errors was immaterial in relation to the overall monthly figures. DHS personnel attributed these errors to the "inexperience and carelessness" of its staff.

Report No. P-965 (July 1991) concerns the claims process of the Department of Alcohol and Drug Programs' Drug/Medi-Cal program, which provides reimbursement for drug treatment services to eligible Medi-Cal beneficiaries. OAG notes weaknesses in the Department's system for processing these reimbursement claims, including the following:

- A small number of providers of methadone maintenance services submitted and were paid for duplicate claims in fiscal year 1989-90.

- One county submitted and was paid for claims representing incompatible drug treatment services in at least 32 instances in fiscal year 1989-90.

- In several instances, providers did not submit to the Department disallowances of claims for drug treatment services.

To improve its system of processing Drug/Medi-Cal claims and disallowances, OAG recommends that the Department incorporate an automated edit to screen out duplications of service, such as claims for the same services provided during the same period to the same client; notify providers of drug treatment services of the Department's requirements for processing disallowances; remind providers of the importance of following these procedures; and recover all overpayments identified in the OAG report.

Report No. P-027 (September 1991) concerns the state Athletic Commission and its controls over the Professional Boxers' Pension Plan, which was established in 1982 to provide a small amount of financial security for professional boxers. Among other things, OAG found that the Athletic Commission did not always collect pension contributions from boxers who earned more than \$1,500 in a year; did not keep accurate records; did not ensure that the interest rate, risk, and liquidity of its investments or others available to it were reviewed (the Commission missed opportunities to increase the rate of return on its investments); and did not ensure that



contributions collected were promptly and completely deposited into the Commission's money market fund. OAG concluded that a lack of control over these areas by the Athletic Commission could result in some boxers receiving pensions for which they have not paid. The Commission also missed opportunities to detect an embezzlement of over \$14,000 in pension funds by an employee of the Department of Consumer Affairs. Finally, OAG noted that the database used for the pension contained many errors that could result in incorrect refunds of pension distributions or incorrect payments of pension benefits to boxers.

To remedy these problems, OAG recommends that the Athletic Commission establish a system to track the amounts of purses earned by boxers; ensure that the amounts of contributions collected after each show can be reconciled with the amounts of contributions deposited into the money market fund; monitor the amount of time it takes to deposit contributions into the money market fund to ensure that these contributions are promptly invested, and take action to correct unnecessary delays; ensure that accounting records reflect all assets, including those in the money market fund; ensure that the interest rate, risk, and liquidity of its investments are reviewed periodically to determine whether other investments would provide a better rate of return; ensure that information about boxers is accurate when entered into the database; and complete its identification and correction of errors in the database.

Other Reports. During the past few months, OAG has also issued the following reports: *A Review of the Management Practices and Financial Operations of the Riverside Community College District* (Report No. F-019, June 1991); *The Lake Elsinore Management Project* (Report No. P-042, August 1991); *A Review of the Division of Labor Standards Enforcement's Handling of the Crowe v. Simpson Attorney Fees Dispute* (Report No. P-033, August 1991); *A Review Concerning Allegations of Conflict of Interest by a Board Member of the Bay Area Rapid Transit District* (Report No. P-036, July 1991); *The Office of State Printing Needs to Strengthen Controls Over Its Electronic Data Processing Resources* (Report No. T-973, July 1991); *A Review of the Board of Equalization's Travel Claims* (Report No. P-026, August 1991); and *An Analysis of Sanctions in the General Relief/General Assistance Programs of Six Counties* (Report No. P-009, August 1991).

LEGISLATION:

SB 1132 (Maddy), as introduced March 8, would require the Auditor General to complete audits in accordance with the "Government Auditing Standards" issued by the Comptroller of the United States. This bill is still pending in the Senate Rules Committee.

LITIGATION:

On June 14, the California Supreme Court granted the legislature's motion for a stay in *Legislature v. Eu*, No. S019660, temporarily blocking a provision of Proposition 140 requiring the legislature to reduce its operating budget 38% by July 1. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 49-50 for background information.) Lawmakers argued that if the stay were not granted, they would be forced to shut down OAG and the Legislative Analyst's Office—a claim that was hotly disputed by the proponents of Proposition 140. Although the court's decision blocks implementation of the entire budget provision, legislative leaders generally agreed that the stay will be applied only to proposed cuts affecting OAG and LAO.

On September 12, the Supreme Court heard oral argument in the underlying matter, which concerns the constitutionality of Proposition 140. During the 90-minute session, attorneys for the legislature argued that the measure constitutes a revision (rather than a mere amendment) of the state constitution, which cannot be accomplished by initiative. In defense of Proposition 140, Deputy Attorney General Manuel Medeiros argued that because the measure did not affect the legislature's traditional powers, no constitutional rights are violated. A ruling from the court is expected by the end of the year.

COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY (LITTLE HOOVER COMMISSION)

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The Little Hoover Commission was created by the legislature in 1961 and became operational in the spring of 1962. (Government Code sections 8501 *et seq.*) Although considered to be within the executive branch of state government for budgetary purposes, the law states that "the Commission shall not be

subject to the control or direction of any officer or employee of the executive branch except in connection with the appropriation of funds approved by the Legislature." (Government Code section 8502.)

Statute provides that no more than seven of the thirteen members of the Commission may be from the same political party. The Governor appoints five citizen members, and the legislature appoints four citizen members. The balance of the membership is comprised of two Senators and two Assemblymembers.

This unique formulation enables the Commission to be California's only truly independent watchdog agency. However, in spite of its statutory independence, the Commission remains a purely advisory entity only empowered to make recommendations.

The purpose and duties of the Commission are set forth in Government Code section 8521. The Code states: "It is the purpose of the Legislature in creating the Commission, to secure assistance for the Governor and itself in promoting economy, efficiency and improved service in the transaction of the public business in the various departments, agencies, and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies, and instrumentalities and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives. . . ."

The Commission seeks to achieve these ends by conducting studies and making recommendations as to the adoption of methods and procedures to reduce government expenditures, the elimination of functional and service duplication, the abolition of unnecessary services, programs and functions, the definition or redefinition of public officials' duties and responsibilities, and the reorganization and or restructuring of state entities and programs. The Commission holds hearings about once a month on topics that come to its attention from citizens, legislators, and other sources.

MAJOR PROJECTS:

Costs and Casualties of K-12 Education in California (June 1991), one of the Commission's periodic reports on the state's education system, focuses on where education dollars are being spent and how the state has failed to keep dropouts in school.

According to the report, a key culprit in the drain on educational resources is district-by-district collective bargaining.